

**CITY OF SAN DIEGO
ETHICS COMMISSION**

Office of the Executive Director

MEMORANDUM

DATE: September 18, 2008

TO: The Committee on Rules, Open Government and Intergovernmental Relations

FROM: Stacey Fulhorst, Executive Director

SUBJECT: Municipal Lobbying Ordinance: Post-Enactment Issues
(San Diego Municipal Code sections 27.4001, et seq.)

In August of 2007, the City Council approved an overhaul of the City's lobbying laws. These new laws took effect on January 1, 2008. Since that time, Commission staff has heard many questions and concerns from the firms and organizations subject to the Ordinance, and has also had an opportunity to identify areas in the Ordinance that could be clarified, simplified, or otherwise improved. Accordingly, the Commission recommends the following amendments to address the following concerns:

“Lobbying” versus “Lobbying Activities”

The Lobbying Ordinance defines “lobbying activities” to include a broad range of activities related to lobbying, including monitoring decisions, gathering facts, and conducting research. In other words, in addition to including actual lobbying, “lobbying activities” includes a variety of other related activities that do not require actual contact with a City Official. The term “lobbying activities” existed in the prior Lobbying Ordinance for purposes of determining whether someone met the compensation threshold, and was incorporated into the current Ordinance initially as a means of capturing the lobbying-related activities for which a Lobbying Firm is paid.

The term “lobbying activities” has a wider application in the current Lobbying Ordinance, and has caused some confusion with both Lobbying Firms and Organization Lobbyists. It clearly adds a layer of complexity to the Ordinance; firms and organization have to disclose two sets of individuals: those who lobby and those who indirectly support lobbying efforts. In addition, it has created some ambiguity for the public. For example, a firm may identify a person who engaged only in “lobbying activities” on the Quarterly Disclosure Report, while leaving blank the spaces for the names of City Officials lobbied; in such circumstances it may appear to the public that City Officials were lobbied but left off of the form.

In order to clarify the original intent of the disclosure laws, the Commission recommends replacing the term “lobbying activities” with “lobbying” in the applicable sections of the Ordinance. Such amendments would result in firms and organizations listing on their Quarterly Disclosure Reports only the names of the individuals who actually lobby, not the names of individuals who merely monitor decisions or conduct research in connection with prospective lobbying. Additionally, this amendment would require firms and organizations to disclose on their quarterly reports the municipal decisions for which they actually lobbied during the quarter, but not the decisions for which their activities were limited to monitoring or researching. The term “lobbying activities” would remain in the Ordinance solely as a means for Lobbying Firms to calculate the compensation they received for their lobbying and related efforts in a quarter in which they actually lobbied City Officials.

Definition of “Lobbyist”

Because of the expansive nature of “lobbying activities” (see discussion above), the term “lobbyist” is arguably broad enough to include volunteer members (non-officers) of an organization who lobby, as well as individuals who are paid to assist on lobbying efforts (e.g., secretaries, assistants), but never have an actual lobbying contact. The Commission never intended the Lobbying Ordinance to require that such individuals be listed as “lobbyists” on a Registration Form or Quarterly Disclosure Report. Accordingly, the Commission recommends revising the definition of “lobbyist” to clarify that it includes only those individuals who actually lobby on behalf of their clients or organizations.

Campaign Activities of Uncompensated Officers Who Lobby

Under the Lobbying Ordinance, uncompensated officers of an Organization Lobbyist are generally exempt from disclosing campaign activities and City contract services. For example, an Organization Lobbyist is not required to disclose the fundraising activities of the volunteer members of its board of directors. The organization is, however, required to disclose the fundraising activities of its lobbyists. A “lobbyist” is defined to include any person who lobbies on behalf of an Organization Lobbyist, and thus the term includes uncompensated officers who lobby. Under the Lobbying Ordinance, when a person is both an “uncompensated officer” and a “lobbyist,” the organization must disclose the person’s lobbying as well as his or her campaign activities and City contract services. [Note that the lobbying contacts of uncompensated officers do not count towards the registration threshold.] Some organizations have been confused by board members being exempt in their capacity as “uncompensated officers,” but being subject to different rules in their capacity as “lobbyists.”

In order to clarify the law and simplify reporting requirements, the Commission recommends further amending the definition of lobbyist to include only an organization’s chairperson, and not other uncompensated officers, as well as an organizations owner and employees who engage in lobbying. The Commission also recommends clarifying language in the sections concerning disclosure to ensure that organizations understand that they must disclose lobbying contacts by the organization’s chairperson, as well as all campaign activities by the chairperson, if he or she lobbied on behalf of the organization during the reporting period.

Contact Needed Before Registration Requirement

Although the Commission has advised Lobbying Firms that they are only required to identify on their Registration Forms the names of clients for whom the firms have had at least one lobbying contact, the Commission recommends adding some language to clarify this distinction.

Amending Organization Lobbyist's Registration Form

The Lobbying Ordinance requires an Organization Lobbyist to disclose on its Registration Forms the municipal decisions it sought to influence during the 60 days prior to its filing date. It also requires an Organization Lobbyist to amend its Registration Form within ten days of any changes in the information on the form. The purpose of the ten day amendment was to ensure that the public received timely information regarding any new municipal decisions the Organization Lobbyist was attempting to influence. However, the provision regarding disclosure of information on the Registration Form was inadvertently drafted to include only previous decisions the Organization Lobbyist sought to influence. Thus, if an Organization Lobbyist starts lobbying on a municipal decision not identified on its Registration Form, there is no requirement that the Registration Form be amended to reflect that fact. The Commission therefore recommends amendments to clarify that Organization Lobbyists must disclose both decisions it is seeking to influence, as well as those it sought to influence during the 60 calendar days preceding its registration.

Miscellaneous

The Commission recommends the following amendments in order to clarify the original intent of the disclosure provisions in the Lobbying Ordinance:

- Lobbying Firms often have quarters during which they have no lobbying contacts, and may even engage in no “lobbying activities.” Although the Commission staff has advised firms that they need not report anything for clients for whom they have engaged in no lobbying activity in the quarter, some firms are hesitant to report nothing for fear that it will appear to the public that they are failing to report information for their registered clients. As a result, the Commission recommends amending the Lobbying Ordinance to require that a Lobbying Firm affirmatively state on the Quarterly Disclosure Report that the firm engaged in no lobbying for the client during the quarter.
- As explained above, the term “lobbying activities” originated in the prior Lobbying Ordinance, which encompassed lobbying communications with all City officers and employees, not just the high-level officials identified in the current Lobbying Ordinance. Under the current Ordinance, therefore, a communication with a lower level City employee is not “lobbying” even if made for the purpose of influencing a municipal decision. Such communications do, however, fit within the scope of what is a “lobbying activity.” In other words, when a Lobbying Firm is seeking to influence a municipal decision and receives compensation to contact a lower level City employee as part of that

effort, it is appropriate to include that activity within the scope of “lobbying activities.” The Commission therefore recommends an update to the definition of “lobbying activities” to include communications with all City employees.

- The Lobbying Ordinance requires Lobbying Firms and Organization Lobbyists to disclose individuals who engaged in “fundraising activities” during the reporting period. A person engages in “fundraising activities” when he or she has some responsibility for raising \$1,000 or more for a candidate. A person must be identified on a disclosure statement if he or she raised \$1,000 in connection with one fundraising effort, or if he or she raised an aggregate of \$1,000 through multiple efforts. The Lobbying Ordinance’s disclosure language uses the phrase “for each instance of fundraising activity,” which could be interpreted to mean that disclosure is only required for each instance of reaching the \$1,000 threshold, i.e., that disclosure is not required when a person has multiple fundraising efforts that collectively meet the reporting threshold. Accordingly, the Commission recommends changes to clarify that all efforts by an individual that result in the raising of \$1,000 or more for a candidate must be disclosed.
- The Commission recommends a similar amendment to the provision that requires Lobbying Firms and Organization lobbyists to disclose campaign contributions made by owners, officers, and lobbyists of \$100 or more. Specifically, the Commission proposes language to clarify that this disclosure applies to all contributions made during the reporting period that total \$100 or more.
- The Lobbying Ordinance requires Lobbying Firms and Organization Lobbyists to disclose the names of owners, officers, and lobbyists who “provided compensated campaign-related services to a candidate or candidate-controlled committee.” The Commission recommends updating the Ordinance to clarify that compensation includes a contingency agreement such as a “win bonus” that will be awarded in the event that a candidate wins an election.

For your convenience we have drafted the attached strike-out version reflecting proposed changes to the relevant portions of ECCO. We look forward to discussing these proposed changes with you at the Rules Committee meeting on October 8, 2008. If you have any questions, please contact me at your convenience.

Stacey Fulhorst
Executive Director

Enclosure

cc: Catherine Bradley, Chief Deputy City Attorney